IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 98 of 2006
In
COMPANY APPLICATION No. 143 of 2006
With
COMPANY PETITION No. 99 of 2006
In
COMPANY APPLICATION No. 142 of 2006
And
COMPANY APPLICATION No.173 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARMERY LABORATORIES PVT. LTD. - Petitioner(s)
Versus
... - Respondent(s)

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Appearance :
MR DHARMESH V SHAH for Petitioner(s) : 1,MR LALIT M PATEL for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/09/2006

COMMON ORAL JUDGMENT

1. These are the petitions filed by the petitioner companies for sanctioning of the scheme of amalgamation of Armery Laboratories private Limited (transferor company) with Taurus Laboratories Private Limited (transferee company) under Section 391 r.w. Section 394 of the Companies Act; 1956.

2. It is submitted by the respective petitioners that the sanction of the said scheme of amalgamation will be for the benefit of the transferor company and transferee company and their equity shareholders and creditors and it enable the transferee company to carry on the business more efficiently and more profitably and under one large company. It is also further submitted that it will be advantageous and in the interest of all concerned to amalgamate the transferor company with transferee company. It is also further submitted that no outside interest is involved, nobody will be prejudiced or affected by the proposed amalgamation.

3. The proposed scheme of amalgamation was approved unanimously by the equity shareholders and creditors of the transferor company through their written consent letters and therefore, vide order dated 27th March, 2006 this Court passed an order in Company Application No. 143 of 2006 dispensing with the meeting of the equity shareholders and creditors of the transferor company for the purpose of approving the scheme of amalgamation as required to be convened under Section 391 of the Companies Act; 1956. Similarly, the proposed scheme was approved unanimously by the equity shareholders of the transferee company through their written consent letters and therefore, vide order dated 27th March, 2006 passed in Company Application No.142 of 2006, the meeting of the equity shareholders of the transferee company as required to be convened under Section 391 of the Companies Act; 1956 was dispensed with. Similarly, in view of the written consent letters of the creditors of the transferee company, by order dated 16th June, 2006 passed in Company Application No. 173 of 2006, the meeting of

the creditors of the transferee company for the purpose of approving the scheme of amalgamation as required to be convened under Section 391 of the Companies Act; 1956 also was dispensed with.

4. The present petitions were admitted on 4th July, 2006 and notices were issued to the Central Government through the Regional Director, Department of Company Affairs. Notice was also issued upon the Official Liquidator. The notices were ordered to be published in “Indian Express” English daily and “Jansatta” Gujarati daily, both in Ahmedabad edition respectively. Pursuant to the same, the notices for hearing of the petitions were published on 19th July, 2006 in the said newspapers. An affidavit dated 3rd August, 2006 about publication of the notices for hearing of the petitions has been filed by Shri Harish Keshvlal Lathia, Director of the respective petitioners companies, which is directed to be taken on record. No one has come forward with any objection to the petitions even after the said publication.

5. Notice of the petition of transferor company was served upon the Official Liquidator attached to the Gujarat High Court. Vide report dated 30th August, 2006 it is submitted by the Official Liquidator that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the company have submitted their report and on the basis of the information and explanation given to them and the books of accounts produced before them, he is of the opinion that the acts and transactions of the company were conducted within the object mentioned in the memorandum of association of the company and that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or the public interest. The report of the Official Liquidator dated 30th August, 2006 is on record.

6. Notices of the petitions were also served upon the Central Government along with the affidavit/letter dated 30th August, 2006 addressed by the Regional

Director, Mumbai, to the Registrar of Companies, Gujarat and the letter dated 30th August, 2006 to Shri Malkan, Additional Central Government Standing Counsel, is placed on record by Shri Malkan. In the letter dated 30th August, 2006, it is stated by the Regional Director that the scheme of amalgamation is examined and there is no objection in respect of the said amalgamation and the matter may be left to the Hon'ble Court to be decided on merits. Thus, considering the letter dated 30th August, 2006 by the Regional Director, Mumbai, it appears that the Central Government has no objection to the sanctioning of the scheme.

7.I have heard Shri Dharmesh V. Shah, learned advocate appearing on behalf of the respective petitioners – companies. Considering the averments in the company petitions to the report of the Official Liquidator as well as letter addressed by the Regional Director, Mumbai, and considering the proposed scheme of amalgamation, it also appears to the Court that the amalgamation would be in the

interest of the companies and their shareholders and creditors and therefore, prayers in terms of paragraph – 26 in Company Petition No.99 of 2006 and in terms of paragraph – 27 in Company Petition No. 98 of 2006 are hereby granted.

8. Both these petitions are disposed of accordingly. So far as the costs to be paid to the learned Additional Central Government Standing Counsel is concerned, the same is quantified at Rs.3,500/- per petition and the same may be paid to Shri Malkan, learned Additional Central Government Standing Counsel by respective petitioners.

[M.R.SHAH, J.]

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